



## Mars Khaimov Law, PLLC

100 Duffy Avenue, Suite 510

Hicksville, NY 11801

Tel.: 929.324.0717

Fax: 929.333.7774

E-mail: mars@khaimovlaw.com

### VIA ECF

The Honorable Andrew L. Carter  
United States District Magistrate Judge  
U.S. District Court  
Southern District of New York  
40 Foley Sq.  
New York, New York 10007

February 2, 2024

Re: *Case 1:23-cv-08812-ALC Tarr v. Zappos.com LLC*  
Response to Order to Show Cause

Dear Judge Carter:

Plaintiff respectfully submits this letter in response to the Order to Show Cause dated January 8, 2024. As an initial matter, Plaintiff apologizes for the tardiness of this response, and acknowledges the original due date of January 22, 2024. This error was not willful nor purposeful, and was due to a failure to calendar the deadline of the Order. Plaintiff is hopeful that this oversight will not be cause for the Court to dismiss the action.

In the January 8, 2024 Order, the Court directed Plaintiff to explain why this action should not be dismissed, pursuant to FRCP Rule 4m. Plaintiff acknowledges that there has been a failure to effectuate service herein. This was due to counsel for the Defendant, John Magliery, Esq., notifying Plaintiff's Counsel's office on November 14, 2023 that he is representing the Defendant in this case, and that his client would likely be amenable to waiving service. After that communication, service attempts upon the Defendant ceased to cut costs. Regrettably, the offices failed to communicate effectively after that date to complete the filing of the waiver of service. The waiver of service form is currently with defense counsel and, upon its completion, will be filed expeditiously, if the Court will allow the action to proceed.

As such, Plaintiff again apologizes to the Court for the delay in serving the Defendant here, and urges the Court not to dismiss the case at this juncture, as the prejudice to Plaintiff would be great.

We thank Your Honor for the attention and consideration herein.

Respectfully submitted,

/s/ Mars Khaimov  
Mars Khaimov, Esq.  
Attorneys for Plaintiff

